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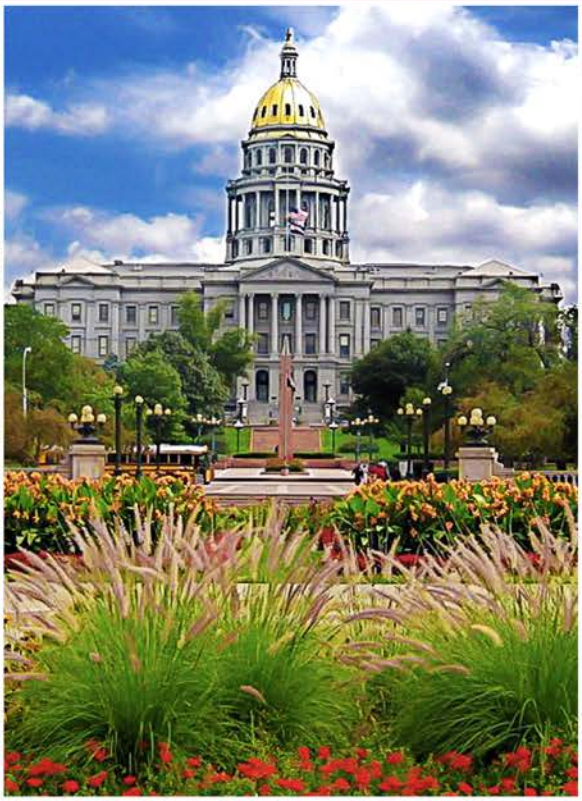
JUDICIAL BRANCH

PUBLIC ADMINISTRATORS


AUGUST 2017 PERFORMANCE AUDIT

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DIANNE E. RAY, CPA
STATE AUDITOR

August 30, 2017

Members of the Legislative Audit Committee:

This report contains the results of a performance audit of Public Administrators within the Judicial Branch. The audit was conducted pursuant to Section 2-3-103, C.R.S., which authorizes the State Auditor to conduct audits of all departments, institutions, and agencies of state government. The report presents our findings, conclusions, and recommendations, and the responses of the Judicial Branch and the Department of the Treasury.

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CONTENTS

Report Highlights 1

CHAPTER 1
OVERVIEW OF THE JUDICIAL BRANCH AND PUBLIC ADMINISTRATORS 3

- Organization of the Judicial Branch 4
- Public Administrators 5
- Caseload 9
- Audit Purpose, Scope, and Methodology 10

CHAPTER 2
OVERSIGHT OF PUBLIC ADMINISTRATORS 13

- Public Administrator Fees and Costs 17
- RECOMMENDATION 1 26

- Data on Public Administrator Cases 27
- RECOMMENDATION 2 37

- Bonds 39
- RECOMMENDATION 3 46

- Undistributed Estate Funds to Treasury 48
- RECOMMENDATION 4 53
- RECOMMENDATION 5 54

- Public Administrator Appointments 55

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REPORT HIGHLIGHTS

PUBLIC ADMINISTRATORS

PERFORMANCE AUDIT, AUGUST 2017

JUDICIAL BRANCH

CONCERN

The Judicial Branch, judicial districts, and courts have not instituted rigorous oversight processes to ensure that Public Administrators meet their fiduciary duty.

KEY FINDINGS

- Public Administrators do not always provide the courts with sufficient information to determine the reasonableness of fees and costs, which are paid out of the estates they administer. In 23 of the 56 cases we reviewed (41 percent), the Public Administrators did not include a breakout of the fees and costs charged to the estates, a detailed accounting of the hours worked or the hourly rate, and/or detail on the types of services provided to justify the amount charged. Public Administrators reported fee rates ranging from $50 to $350 per hour during Calendar Year 2017.
- The Judicial Branch and the courts do not maintain the fundamental data needed to oversee the Public Administrator function and assess Public Administrator performance. Specifically, neither the Judicial Branch nor the courts have Public Administrator data such as total caseload, total amount of assets overseen, total number of hours worked and fees charged, or length of time cases stay open.
- Some Public Administrators may not be maintaining the required bonds. As of April 1, 2017, five did not provide us with evidence of an active bond and 23 had no record of an active bond on file with the Secretary of State's Office, as required by statute. In addition, the statutory $25,000 bond requirement for Public Administrators may not adequately protect decedents' estates and conservatorships.
- The Department of the Treasury had incorrectly deposited about $110,000 from decedent estate cases to its Unclaimed Property Fund, thereby making the funds unavailable for ultimate transfer to the Public School Fund, as required by statute.

BACKGROUND

- Public Administrators are appointed by district courts to act as fiduciaries of last resort when no one else is willing or able to serve as a conservator for a protected person or a personal representative for a decedent's estate.
- Public Administrators are not employees of the State or the judicial districts.
- Of the 22 judicial districts statewide, 13 have appointed Public Administrators. In total, there were 29 Public Administrators (including deputies) in Colorado in Calendar Year 2016.
- According to their annual reports, Public Administrators' caseloads ranged from 0 to 472 cases in Calendar Year 2016, and the estates they managed ranged in value from $0 to about $15 million.
- Public Administrators are required to maintain bonds, which serve as insurance and allow for the recovery of some assets if they fail to act honestly or competently.
- Any funds remaining in an estate administered by a Public Administrator, once all costs of settling the estate have been paid, must be transferred to the Department of the Treasury. Funds are held for 21 years to allow for legal claims, then transferred to the State's Public School Fund. Treasury transferred about $313,000 of such funds to the Public School Fund from Fiscal Years 2013 through 2016.

KEY RECOMMENDATIONS

- Implement mechanisms for collecting sufficient information from Public Administrators for the courts to assess the reasonableness of fees and costs.
- Collect and maintain the fundamental data needed to oversee the Public Administrator function.
- Ensure that Public Administrators maintain bonds of sufficient value to adequately protect the estates and conservatorships they oversee.
- Ensure undistributed funds from decedent estates are handled in accordance with statute by providing guidance on the information that should be provided when transferring funds from decedents' estates.

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CHAPTER 1

OVERVIEW OF THE JUDICIAL BRANCH AND PUBLIC ADMINISTRATORS

Probate is the law of managing the affairs of persons who, either because of death or an impairment, cannot manage their own affairs. Those who manage the money and assets of another individual are fiduciaries, and they have a duty to always act in that individual's best interest. In probate, fiduciaries can serve as personal representatives (commonly referred to as executors) in administering decedents' estates, and as conservators or trustees

for those unable to make financial decisions for themselves. Probate in Colorado is covered by the Colorado Probate Code, [Section 15-10-101 et. seq., C.R.S.] the purpose of which is to "simplify and clarify the law concerning the affairs of decedents, missing persons, protected persons, minors, and incapacitated persons" [Section 15-10-102(2)(a), C.R.S.]. The Colorado Probate Code also created the position of Public Administrator, which serves in the roles of personal representative, conservator, and trustee when there is no one else to serve in these roles. In Fiscal Year 2016, there were about 16,300 new probate cases filed in Colorado, which represented 7.5 percent of the over 217,600 total new cases filed in Colorado courts.

ORGANIZATION OF THE JUDICIAL BRANCH

The Colorado Judicial Branch (Judicial Branch) is responsible for overseeing the Colorado state court system. The Chief Justice of the Colorado Supreme Court is the head of the Judicial Branch. The Colorado Supreme Court has exclusive jurisdiction to promulgate rules governing practice and procedure in all civil and criminal cases, including probate cases.

The Judicial Branch is divided into 22 judicial districts throughout the state, as established in Article VI, Section 10 of the Colorado Constitution, and Section 13-5-101, C.R.S. In 21 of the districts, the district courts handle probate cases along with other matters, including felony criminal cases, civil claims, juvenile matters, divorce proceedings, and water cases. In the remaining district (Denver), the Colorado Constitution established a separate court, known as the Denver Probate Court, which handles only probate cases. For ease of understanding throughout this report, we collectively refer to the judicial districts plus the Denver Probate Court as "the judicial districts." The Chief Justice designates a chief judge in each district, who is responsible for overseeing the administrative functions of that district.

The State Court Administrator's Office (SCAO) was created under Article VI, Section 5 of the Colorado Constitution and operates directly under the Chief Justice to oversee the daily administration of the Judicial Branch. In accordance with the Colorado Constitution and statutes, the SCAO supports the State's courts by:

- Providing administrative and technical support and centralized guidance.
- Developing and implementing operating standards and guidelines.
- Serving as an advocate for the Judicial Branch in obtaining necessary resources from the Legislature.

PUBLIC ADMINISTRATORS

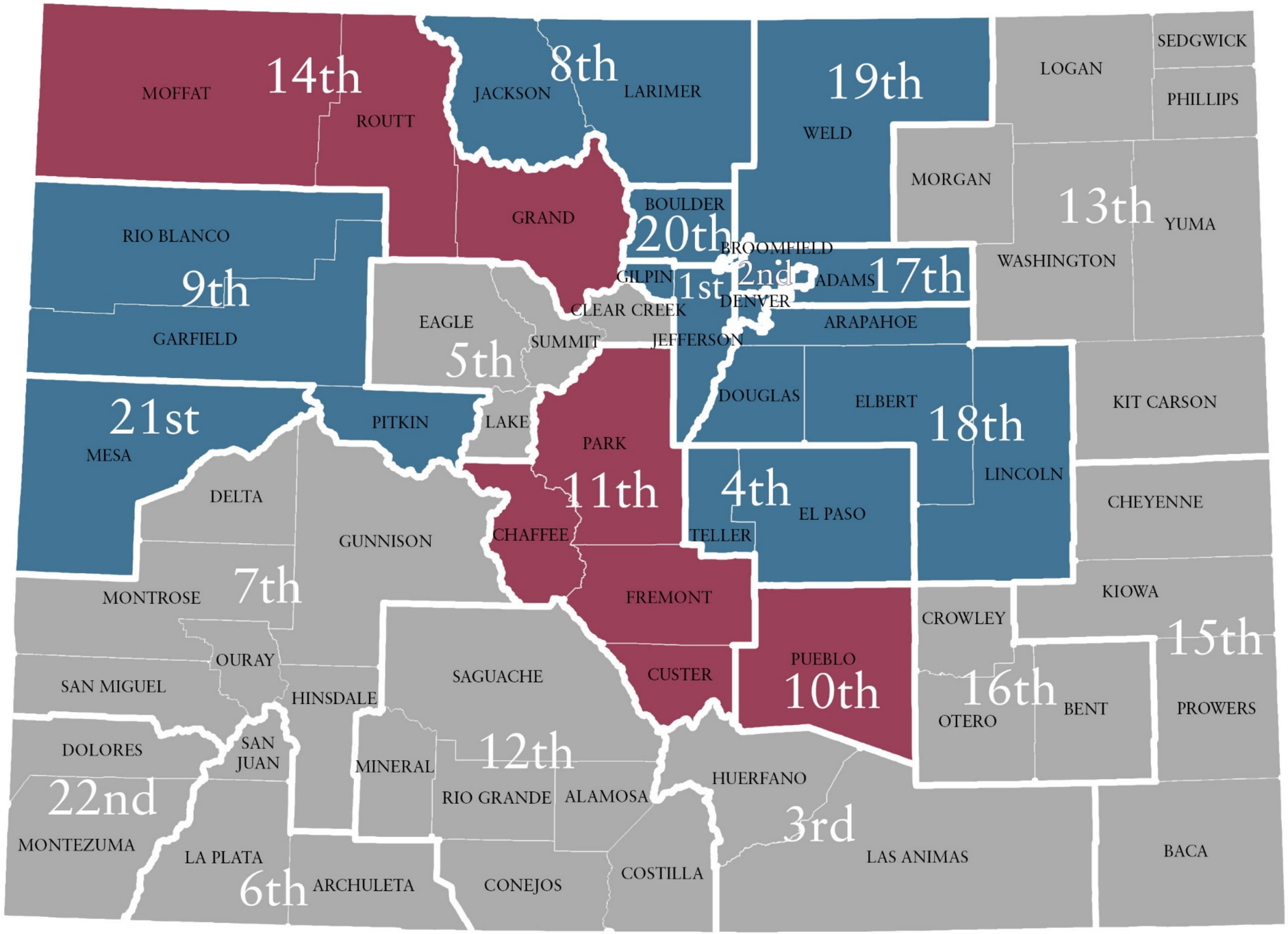
In some probate cases, there is no person willing or able to serve as a fiduciary, or the current fiduciary is not performing adequately and must be removed. For these cases, courts can call on a Public Administrator to perform this function. A Public Administrator is a person appointed by the court in the judicial district who is available to serve as a personal representative, conservator, or trustee. To be eligible to serve as a Public Administrator, statute requires a person to be a qualified elector at least 21 years old and to reside or maintain a principle business in the judicial district to which they are appointed. There is no term of office for the Public Administrator position, so an individual may serve indefinitely until they resign or the court removes them from the position. A Public Administrator is authorized by statute to appoint a deputy (or deputies) who is (are) a qualified elector(s) at least 21 years old and whose appointment is approved by the court [Section 15-12-619, C.R.S.].

Aside from the age and residency requirements, statute does not establish any other criteria or qualifications for Public Administrators. All but one of the individuals serving as a Public Administrator or Deputy Public Administrator at the time of the audit were licensed

attorneys with a background in probate law. The one Deputy Public Administrator who was not an attorney was a paralegal.

The Public Administrator role is overseen by the appointing court, but Public Administrators are not employees of the State or the judicial district, county, or city in which they are appointed. Public Administrators are not compensated with public funds, but rather, they receive compensation from the estates or conservatorships that they administer. Thirteen of Colorado's 22 judicial districts had Public Administrators, and 10 of the 13 districts had at least one Deputy Public Administrator in Calendar Year 2016. The 13 Public Administrators and 16 Deputy Public Administrators in place during this time had been serving in these positions from 2 years to 40 years. A Public Administrator or Deputy Public Administer can serve as a fiduciary in judicial districts other than the one that appointed them, if needed. EXHIBIT 1.1 shows all 22 judicial districts and indicates which districts have appointed Public Administrators and Deputy Public Administrators.

EXHIBIT 1.1.
JUDICIAL DISTRICTS AND PUBLIC ADMINISTRATORS
CALENDAR YEAR 2016



KEY:

- Districts with a Public Administrator and at least one Deputy Public Administrator
- Districts with a Public Administrator and no Deputy Public Administrator
- Districts without a Public Administrator

SOURCE: Created by the Office of the State Auditor from list of districts provided by the State Court Administrator's Office.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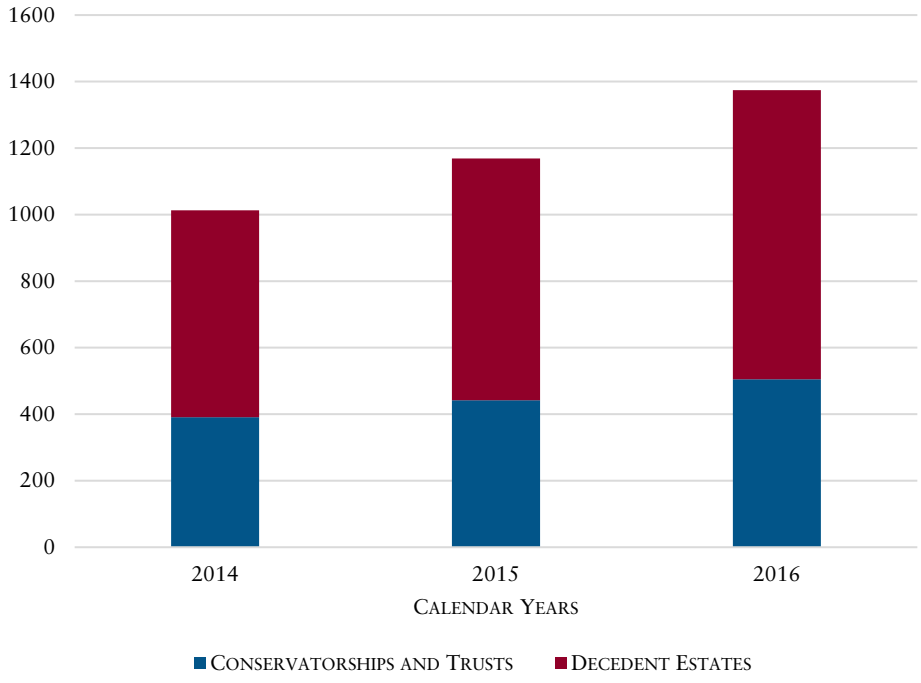
CASELOAD

During Calendar Year 2016, the 13 Public Administrators and 16 Deputy Public Administrators reported working on a total of 1,379 probate cases. The number of cases reported by each Public Administrator or Deputy Public Administrator during the year ranged from zero to 472, and the estates they managed ranged in value from $0 to about $15 million.

As shown in EXHIBIT 1.2, the number of cases reported by Public Administrators and Deputy Public Administrators increased by about 36 percent from Calendar Years 2014 through 2016. The caseload for each year consisted of about 60 percent decedents' estate cases and about 40 percent conservatorships and trusts.

EXHIBIT 1.2.
PUBLIC ADMINISTRATOR CASELOAD BY CASE TYPE[1]
CALENDAR YEARS 2014 THROUGH 2016



SOURCE: Office of the State Auditor analysis of Calendar Years 2014 through 2016 Public Administrator annual reports.
[1] Caseload totals are an estimate based on information reported by Public Administrators in their annual reports. These totals do not include cases from the 10th Judicial District because the Public Administrator in this district does not submit an annual report. In addition, some Public Administrators report only cases closed during the calendar year; therefore, the totals do not reflect their open cases.

AUDIT PURPOSE, SCOPE, AND METHODOLOGY

We conducted this audit pursuant to Section 2-3-103, C.R.S., which authorizes the State Auditor to conduct audits of all departments, institutions, and agencies of the state government. The audit was conducted in response to a legislative request that expressed concerns with the Public Administrator function. Audit work was performed from November 2016 through August 2017. We appreciate the assistance provided by the management and staff of the Judicial Branch, judicial districts, and Public Administrators and Deputy Public Administrators.

We conducted this performance audit in accordance with generally accepted government auditing standards. Those standards require that we plan and perform the audit to obtain sufficient, appropriate evidence to provide a reasonable basis for our findings and conclusions based on our audit objectives. We believe that the evidence obtained provides a reasonable basis for our findings and conclusions based on our audit objectives.

The audit objectives were to assess the Judicial Branch's:

- Controls over the appointment process, both to the position and to specific cases, and whether the courts complied with statutory requirements and applicable court policies.

- Oversight of Public Administrators and whether the courts ensure that Public Administrators fulfill their duties and comply with statute, court policy, and best practices.

- Controls over the court's review of fees charged by Public Administrators and whether those controls provide the courts with the means to determine whether these amounts are reasonable.

To address the audit objectives, we performed the following audit work:

- Reviewed applicable statutes, rules, policies, *National Probate Court Standards*, *Standards for Internal Control in the Federal Government*, and practices in other states.

- Interviewed all 13 Public Administrators and five of the 16 Deputy Public Administrators, SCAO staff, and judges and staff from four judicial districts.

- Reviewed the 11 Public Administrator and Deputy Public Administrator resumes provided by Public Administrators, Deputy Public Administrators, and judicial districts.

- Reviewed Public Administrator and Deputy Public Administrator bonds, and requested evidence of the bonds recorded with the Secretary of State's Office.

- Conducted an online survey of all 13 Public Administrators and 16 Deputy Public Administrators, as well as the judges and judicial staff (including court clerks, district administrators, and protective proceedings monitors) in the 13 districts that have a Public Administrator. We received and reviewed responses from six Public Administrators, three Deputy Public Administrators, six judges, and 11 judicial staff.

- Reviewed the 98 annual reports submitted by Public Administrators and Deputy Public Administrators between Calendar Years 2012 and 2016.

- Reviewed the fee information for the nine Public Administrators and 13 Deputy Public Administrators who had submitted a schedule to the courts or in response to our audit request.

- Analyzed the amount of undistributed funds from decedent estates that Public Administrators and Deputy Public Administrators reported that they had sent to the Department of the Treasury in their Calendar Years 2012 through 2015 annual reports.

- Analyzed caseload and case value data available from the SCAO and the Public Administrator annual reports for Calendar Years 2012 through 2016.

- Analyzed the five internal audits that the SCAO conducted on Public Administrator and Deputy Public Administrator cases during Calendar Years 2013 through 2015.

We relied on sampling to support our audit work and selected the following samples:

- A random sample of 25 large estate cases that were reported in the Judicial Branch's case management system or the Public Administrator annual reports between Calendar Years 2014 and 2015.

- A random sample of 20 conservatorship cases that were reported in the Judicial Branch's case management system or the Public Administrator annual reports between Calendar Years 2014 and 2015.

- A random sample of 11 small estate cases that were reported in the Judicial Branch's case management system or the Public Administrator annual reports between Calendar Years 2014 and 2015.

When samples were chosen, the results were not intended to be projected to the entire population. The samples were selected to provide sufficient coverage to test controls of those areas that were significant to the objectives of the audit.

We planned our audit work to assess the effectiveness of those internal controls that were significant to our audit objectives. Our conclusions on the effectiveness of those controls, as well as specific details about the audit work supporting our findings, conclusions, and recommendations, are described in CHAPTER 2.

CHAPTER 2

OVERSIGHT OF PUBLIC ADMINISTRATORS

In Colorado, the probate system is governed by the Colorado Probate Code (Code), which the State adopted into statute in 1973. The Code was "designed to shorten and simplify the probate of estates...and promotes a speedy and efficient system for estate administration." The Code was also intended to reduce court oversight of cases, especially estate cases, so that non-disputed cases could proceed without the court's involvement, and save court resources. The effort to limit court involvement in the

probate system has also been applied to the Public Administrator function.

Within Colorado's probate system, Public Administrators serve as a fiduciary in those probate cases where there is no one else willing or able to serve. As a fiduciary, Public Administrators can serve in one of the following roles:

- **CONSERVATOR OR TRUSTEE.** A judge can appoint a Public Administrator to act as a conservator or trustee of a protected person's finances if (1) the case is referred to the court by county social services or other entity, (2) other interested and able parties request the Public Administrator be appointed, or (3) the judge decides that the current conservator or trustee is not acting in the best interest of the protected person and needs an uninterested party to take control to protect the person's property [Section 15-12-622, C.R.S.]. Once appointed, the Public Administrator manages the assets of the protected person's estate until relieved of this duty by the court. As conservators, Public Administrators are required by statute to file a financial plan no later than 90 days after the appointment, an annual report detailing the activity on the case, and a final report upon termination of the appointment [Sections 15-14-418 and 420, C.R.S.].

- **PERSONAL REPRESENTATIVE.** Public Administrators can serve as personal representatives when there is no heir, nominated individual, or other party named in a decedent's will available or willing to serve [Section 15-12-621, C.R.S.]. As personal representatives, Public Administrators are responsible for conducting investigations of a decedent's estate to identify and protect assets, searching for evidence of heirs, and administering the estate if the decedent was a resident of the judicial district or a non-Colorado resident with property in the district. A Public Administrator can also be appointed when a party wishes to bring a suit against a decedent's estate or when there is a need for an uninterested party to protect the assets of a decedent. Decedent estates generally fall into two categories, large estates and small estates, as defined by Section 15-12-1201, C.R.S.:

- **LARGE ESTATES.** In Calendar Year 2016, a large estate was defined as one in which the decedent owned real property and/or had personal property valued at more than $64,000. With large estates, the Public Administrator can serve as personal representative only by court appointment. In these cases, the Public Administrator will serve until an appropriate individual (e.g., relative or caretaker) is identified to assume the duties or until the estate is settled. The duties associated with administering a large estate can vary greatly from case to case. For example, Public Administrators may be required to search for heirs, distribute or sell personal property, clean and sell real estate, and/or manage conflict amongst feuding family members. The court's oversight of these cases depends on the complexity involved in administration. For example, when an estate involves feuding parties, a judge will oversee court hearings and issue orders. In other cases, such as when the decedent has prepared a clear will, the court may provide little oversight outside of ensuring that the case is closed in the proper manner. All of these cases must be closed by a formal hearing and the Public Administrator must file a final accounting [Section 15-12-621(5), C.R.S.]. The final accounting includes all receipts and disbursements, including fees and costs paid to the Public Administrator, and other distributions made from the estate.

- **SMALL ESTATES.** In Calendar Year 2016, a small estate was defined as one in which the decedent did not own real property and had personal property valued at $64,000 or less. With small estates, the Public Administrator can assume personal representative duties through an affidavit; they do not have to be formally appointed by the court and the court does not have any knowledge of, or involvement with, the administration of the estate. Such cases are commonly brought to the attention of the Public Administrator by notification of a person's death from a county coroner's office, nursing home, or landlord. In these instances, the Public Administrator investigates the case and looks for individuals who may be eligible and qualified to manage the estate. If the Public Administrator does not identify someone to

> take over the estate's administration, they will make arrangements for the decedent's remains and pay any debts owed by the decedent at the time of death, as well as any expenses incurred while administering the estate. Although the courts do not supervise the administration of small estate cases, when the Public Administrator closes out a small estate, they are required by statute to file a final statement of account with the court. This statement must include "all receipts and disbursements made during the administration of the estate including the Public Administrator's fees and costs" [Section 15-12-621(6), C.R.S.].

When appointing an individual to the Public Administrator position, the courts are granting these individuals the authority to make critical financial decisions for a protected person (as a conservator) or an estate (as a personal representative). In many of these cases, there is no one else with an interest in making sure that the Public Administrator meets their fiduciary duty and acts in the best interest of the protected person or the decedent's estate. Thus, there is an inherent public trust in this position. It is important that the Judicial Branch, judicial districts, and courts appropriately balance the need to comply with the Colorado Probate Code's direction to reduce the court's involvement in probate cases with the need to perform due diligence in making Public Administrator appointments and provide sufficient oversight of the Public Administrators once they are appointed to help prevent the misuse of their authority.

We identified several key areas where the Judicial Branch, judicial districts, and courts could improve their oversight of the function to help ensure that Public Administrators meet their fiduciary duty. Specifically, we found that (1) there are significant gaps in the processes in place for the courts to ensure that Public Administrators only charge fees and costs that are reasonable and proper; (2) the Judicial Branch and the courts do not collect and maintain the fundamental data needed to oversee the Public Administrator function in Colorado; and (3) there are gaps in the bonding process, which is meant to protect the assets of protected persons in conservatorships and decedent estate cases. In addition, we found that neither the Department of the Treasury

(Treasury or Treasurer) nor the Judicial Branch have provided sufficient guidance to Public Administrators on how to appropriately handle undistributed funds from decedents' estates. These findings are discussed in this chapter. The end of the chapter also provides an informational discussion on the processes courts use to appoint Public Administrators.

PUBLIC ADMINISTRATOR FEES AND COSTS

Public Administrators are paid for their services from the estates they administer as a personal representative for deceased individuals or from the accounts of protected persons they oversee as a conservator; they are not paid with public funds. In addition, Public Administrators can collect reimbursement from the estates and protected persons' accounts for any costs they incur while performing their duties. For example, a Public Administrator might incur costs associated with home repairs and realtor fees when preparing a decedent's house for sale. If an estate or conservatorship does not have sufficient funds to cover the Public Administrator's fees, then the Public Administrator may not receive full, or in some cases any, compensation for performing the services.

Each Public Administrator files an annual report with the court that appointed them detailing the cases they handled in the previous calendar year as the Public Administrator. Some Public Administrators include information in their annual reports on the fees they charged and the costs they collected during the year. Public Administrators also submit information to the courts on fees and costs through the interim and final accountings for decedents' estates and annual and final reports for conservatorship cases. These reports are required of all fiduciaries, not just Public Administrators.

Public Administrators and Deputy Public Administrators reported fee rates ranging from $50 per hour to $350 per hour for Calendar Year 2017. According to the Public Administrators and Deputy Public

Administrators, the rates charged depend on the type of work conducted. EXHIBIT 2.1 provides the minimum and maximum hourly rates for Public Administrators and Deputy Public Administrators in each judicial district.

EXHIBIT 2.1.
PUBLIC ADMINISTRATOR HOURLY FEES
BY JUDICIAL DISTRICT
CALENDAR YEAR 2017 (AS OF JUNE 2017)

DISTRICT	MINIMUM	MAXIMUM
1	$195	$200
2	$265	$325
4	$250	$300
8	$200	$250
9	$ 50	$250
10	$200	$250
11	$300	$300
14	$100	$200
17	$115	$285
18	$ 50	$210
19	$135	$135
20	$275	$350
21	$160	$250

SOURCE: Office of the State Auditor analysis of interviews and fee schedules provided by Public Administrators and Deputy Public Administrators for Calendar Year 2017.

WHAT AUDIT WORK WAS PERFORMED, WHAT WAS THE PURPOSE, AND HOW WERE THE RESULTS MEASURED?

We reviewed information on fees and costs in the 19 Public Administrator annual reports submitted in Calendar Years 2015 and 2016; these annual reports were submitted by both Public Administrators and Deputy Public Administrators. In addition, we reviewed the following sample of cases handled by Public Administrators during Calendar Years 2014 and 2015 to determine the amount of fees charged by the Public Administrators during the administration of these cases:

- 25 large estate cases with a total value of over $6.7 million
- 20 conservator cases with a total value of over $3.1 million
- 11 small estate cases with a total value of about $98,500

For each of the sampled cases, we reviewed the Judicial Branch case files, which included annual and final conservator reports for the conservatorship cases, and interim and final accountings for the estate cases.

We interviewed all 13 Public Administrators and five of the 16 Deputy Public Administrators. We also received additional information through survey responses for nine of the Public Administrators regarding their practices for charging fees and collecting costs, the documents they file with the courts regarding fees and costs, and the courts' processes for approving fees and costs. Further, we interviewed 14 judicial district staff from four districts, including judges, probate registrars, protective proceedings monitors, and district administrators, and we received additional information through survey responses from 17 judicial district staff from nine districts regarding their practices for reviewing and approving fees and costs.

The purpose of our audit work was to evaluate the processes used by the courts to monitor the fees and costs Public Administrators charged to estates or protected persons' accounts in conservatorships, in accordance with the following statutory requirements.

First, statute provides that the Office of the Public Administrator shall only charge fees and costs that are reasonable and proper for similar services in the community and should attempt to minimize fees while providing quality fiduciary, administrative, and legal services [Section 15-12-623(3), C.R.S.].

Second, statute provides that the courts have an inherent authority, discretion, and responsibility to determine the reasonableness of fiduciary compensation and costs when appropriate [Section 15-10-602, C.R.S.]. When the court looks at the reasonableness of fees, statute

lists factors the court shall consider [Section 15-10-603, C.R.S.], including:

- The time and labor required, the novelty and difficulty of the issues the fiduciary is managing, and the skill required to perform the service properly.

- The compensation customarily charged in the community for similar services and whether the fiduciary has charged variable rates that reflect comparable payment standards in the community for like services.

- The nature and size of the estate, the liquidity or illiquidity of the estate, and the results and benefits obtained during the administration.

- The adequacy of any detailed billing statements upon which the compensation is based.

- Whether, and to what extent, any litigation has taken place and the result of such litigation.

These statutory requirements are consistent with *National Probate Court Standards* (Standards), published by the National College of Probate Judges in 2012, which were created following numerous studies and articles documenting exploitation and abuse by conservators and guardians, including financial abuses in conservatorships and estate cases. These standards recommend that fiduciaries in supervised estates, such as Public Administrators, seeking payment from an estate should submit sufficient evidence to the Probate Court to allow it to make a determination concerning compensation. In addition, the Standards state that the Probate Court should direct fiduciaries to provide detailed accountings that are complete, accurate, and understandable. According to the Standards, a detailed accounting can serve as a deterrent against theft and fraud. An accounting should include all assets, the distribution of those assets, the payments of debts and taxes, and all transactions by the fiduciary during the administration of the

estate. Further, any fees charged as a fiduciary should be differentiated from attorney fees, and the fees charged in both categories should be reasonable. The Standards also state that detailed accountings should be provided for any fees collected on activities not included in the order of appointment.

For the court to be able to consider the statutory factors listed above and follow the Standards when determining the reasonableness of the fees and costs Public Administrators charge, the court needs to have information about the time, difficulty, and skill level involved in the Public Administrator carrying out his or her services; the unit fees (e.g., hourly rate) the Public Administrator is charging for each type of service; and the benefits provided by the Public Administrator's services. Therefore, we reviewed the reports in our sample to determine whether the documentation filed by the Public Administrators (1) reported fees and costs separately, (2) included a detailed breakout of the services provided (e.g., time spent by service, skill level for each type of service, etc.) for the fees and the costs incurred, and (3) the total amount Public Administrators charged in both fees and costs to each estate, including as a percentage of its value.

Our review of the total costs also considered the results of a survey conducted by the American College of Trust and Estate Counsel. This survey, released in 2002, examined the statutes in all 50 states and showed that nearly every state requires that fees charged by personal representatives in probate cases be reasonable, with a number of states establishing set fee schedules based on the size of the estate. The survey found that in the 50 states, the fees for personal representatives as a percentage of the total estate value varied from 2 to 10 percent of the estate value, depending on the size of the estate. Although the survey did not make recommendations about what amount of fees would be considered reasonable, the fact that 10 percent of the estate value was the maximum amount of fees in many states indicated that anything over this percentage might be considered unreasonable. The study did not include comparable information related to the reasonableness of fees in conservatorship cases.

WHAT PROBLEMS DID THE AUDIT WORK IDENTIFY?

Overall, we found that there are significant gaps in the processes in place for the courts to ensure that Public Administrators only charge fees and costs that are reasonable and proper for similar services in the community. Specifically, we found that Public Administrators do not always provide the courts with sufficient information to determine the reasonableness of fees and costs. We identified issues with 23 of the 56 cases reviewed (41 percent), including:

- 14 large estate cases (of the 25 large estate cases we reviewed) where the Public Administrators did not include a breakout of the fees and costs charged to the estates or detail on the types of services provided to justify the amount charged. The total value of these 14 estates was $3.8 million and the Public Administrators charged approximately $325,800 in fees and costs, or about 9 percent of the total value of the estates. In eight of these cases, the Public Administrators charged more than 10 percent of the estates' gross values, ranging from 11 percent to 38 percent.

- 6 conservatorship cases (of the 20 conservatorship cases we reviewed) where the Public Administrator did not include a detailed accounting of the hours worked at a given rate and the services provided at those rates to justify the fees charged to the protected persons' accounts. The total value of the protected persons' assets in these six cases was approximately $763,000 and the Public Administrators charged about $53,100 in fees and costs, or about 7 percent of the total assets. Fees and costs did not exceed 10 percent of total assets for any of these cases.

- 3 small estate cases (of the 11 small estate cases we reviewed) where the Public Administrators did not include details on the types of services provided to justify the fees charged to the estates. In addition, the Public Administrator in one of the cases did not provide a breakout of fees and costs. The total value of these three estates

was approximately $60,000 and the Public Administrators charged about $7,200 in fees and costs, or about 12 percent of the total value of the estates. In two of the three cases, the Public Administrators charged more than 10 percent of the estates' values, ranging from 40 percent to 60 percent.

WHY DID THESE PROBLEMS OCCUR?

The Judicial Branch has not provided Public Administrators with sufficient guidance on the information that should be reported for fees and costs. Specifically:

THE INTERIM AND FINAL ACCOUNTING FORM FOR LARGE ESTATES DOES NOT REQUIRE A BREAKDOWN OF PROFESSIONAL FEES AND COSTS. This form must be completed and submitted to the court during the administration of an estate, if ordered by the court, and when an estate closes. It does not require the Public Administrator to differentiate between fees and costs, include a description of the services provided for the amount charged, or include the hourly rate for the fees that are charged so that a comparison can be made to the market. Instead, the form only requires that the total amount of disbursements from the estate be listed.

CONSERVATORSHIP ANNUAL REPORTS DO NOT PROVIDE SUFFICIENT GUIDANCE ON THE FEE INFORMATION THAT SHOULD BE INCLUDED. Our 2011 *Judicial Branch Oversight of Guardianships and Conservatorships Performance Audit* identified issues with the lack of detailed information in conservatorship reports, including insufficient documentation on expenses and who benefited from the expense (i.e., the conservator or the protected person). In response to the audit, the Judicial Branch has made improvements to the annual and final report forms for conservatorships, including separate lines for different types of fee categories (e.g., conservator fees, guardian fees, legal fees, etc.), the hourly rate charged for each fee category and number of hours charged at that rate, and a brief description of the services provided for the fees charged. However, the Judicial Branch has not provided sufficient guidance on the level of information that should be provided. As a result, we saw variation in the way Public Administrators are completing this form. For example, one Public Administrator in our

sample included a range of hourly rates, $35 to $250 per hour, the number of hours worked, an amount charged to other costs with no explanation as to what those costs were for, and "Professional Conservator" as a description of the services provided. Conversely, other Public Administrators in our sample included a detailed breakdown of the services provided (e.g., bank reconciliation, legal document preparation, writing checks to pay bills, etc.) in their conservatorship reports and the specific hourly rates charged for these services. Providing this type of information should be considered a best practice for the information that fiduciaries, including Public Administrators, should provide.

There is no guidance for the small estate "Statement of Account." Although statute requires Public Administrators to complete and submit a "Statement of Account" that includes fees and costs when a small estate is closed, the Judicial Branch has not developed a standard form or template for this purpose. Further, neither statute nor the Judicial Branch provide guidance on what the Statement of Account should include, require that the Public Administrator differentiate between fees and costs, or require a description of the services provided for the amount charged.

WHY DOES THIS PROBLEM MATTER?

When the courts do not receive sufficient information to assess the reasonableness of fees and costs in individual cases, the courts cannot identify instances in which a Public Administrator is charging unreasonable fees and unnecessarily depleting estates. If a Public Administrator does not report how much they charged for a given service, the court would not have sufficient information to determine whether the fees are reasonable for the labor required, the novelty and difficulty of the questions involved, the skill required to perform the service properly, or whether the compensation is consistent with the amount customarily charged in the community for similar services. We found that on average, when Public Administrators provided a detailed accounting of fees and costs, they charged 8 percent of the decedents' estates in large estate cases and 6 percent of protected persons' assets in conservatorship cases. The fees and costs spent to administer small

estates typically took a large portion, or all, of the deceased person's assets.

Additionally, if a Public Administrator is charging unreasonable fees, they are depleting the estates of funds or the protected person of needed assets. In estate cases, after the Public Administrator and other costs incurred by the estate have been paid and funds have been distributed to heirs, any undistributed funds are sent to the Department of the Treasury. These monies are held by the State for 21 years in case previously unidentified heirs make a claim on the money. After 21 years, that money is transferred into the Public School Fund to pay for K-12 education. If the Public Administrators are charging unreasonable fees, less money would eventually be available for potential heirs that later come forward or for the Public School Fund. For conservatorships, the assets in the protected person's accounts are generally needed to support the protected person. Once that money is depleted, the individual may be required to seek public assistance.

Finally, the Judicial Branch operates on the premise of conflict between two parties. In cases involving conservatorships or estates, the courts would expect an interested party to challenge any questionable fees charged to the estate or to the assets of a protected person. The court could then adjudicate those objections. However, in some Public Administrator cases, there is no interested party to observe and then object to the Public Administrator's actions. Thus, it falls on the court to review and object to any fees charged by the Public Administrator.

RECOMMENDATION 1

The Judicial Branch should implement mechanisms for collecting sufficient information from Public Administrators for the courts to assess the reasonableness of fees charged to and costs collected from decedents' estates and protected persons' accounts. This should include collecting information on the hourly rate, number of hours charged, and description of each distinct service provided, and providing guidance on the information that should be included in the small estate statement of accounts.

RESPONSE

JUDICIAL BRANCH

AGREE. IMPLEMENTATION DATE: SEPTEMBER 2018.

The Judicial Branch takes the responsibility for oversight of fiduciaries seriously. The Branch agrees with the recommendations and will convene a group of stakeholders, charged by the Chief Justice, to develop policies and procedures to address the issues identified in the audit. The group will obtain input, information and comments from various entities to develop potential changes to court operations. The Branch will seek legislative and rule changes, as necessary.

The stakeholders have been identified and invited to participate and the first meeting is scheduled. The group will include judicial officers, Public Administrators, and court staff.

As part of the charge, the group will address systems to collect and maintain data to assess the reasonableness of fees charged and costs collected by Public Administrators as well as providing guidance on the small estate statement of accounts.

DATA ON PUBLIC ADMINISTRATOR CASES

When acting in their fiduciary roles, Public Administrators are required to file certain reports depending on the role in which they are serving. Public Administrators serving as personal representatives must submit interim accountings, when required by the court, for each large estate case they administer, as well as a final accounting when the estate is closed [Section 15-12-1001, C.R.S., and Colorado Court Rules Chapter 27, Rule 30]. For small estates, Public Administrators must submit a final accounting when the estate is closed [Section 15-12-621(6), C.R.S.]. Public Administrators serving as conservators must submit annual reports on the conservatorship, as well as a final report when the conservatorship ends [Section 15-14-420(1) and 15-14-431(2), C.R.S.]. In addition, the Judicial Branch's case management system includes other types of data for most probate cases, with the exception of some small estate cases. For example, the case management system maintains, among other things, names of parties to a case, records of hearings, orders issued by the court, and documents related to cases.

WHAT AUDIT WORK WAS PERFORMED, WHAT WAS THE PURPOSE, AND HOW WERE THE RESULTS MEASURED?

We interviewed all 13 Public Administrators, five Deputy Public Administrators, and 14 judicial district staff from four districts, including judges, probate registrars, protective proceedings monitors, and district administrators. We also received survey responses from nine Public Administrators and Deputy Public Administrators, and 17 judicial district staff from nine districts regarding reporting by the Public Administrators to the courts. We also reviewed the 19 annual reports submitted by Public Administrators and Deputy Public Administrators in 2017 for activities in Calendar Year 2016 and compared the information in the reports to aggregate data on the cases

in which the Public Administrators were a named party from the Judicial Branch's case management system.

In addition, we reviewed three non-statistical random samples of cases where a Public Administrator had been appointed to determine if the Public Administrators filed all of the required documents, if they submitted any additional or supporting documentation to the court, and what other information related to the cases was in the Judicial Branch's case management system. These samples included:

- 20 conservatorship cases
- 25 large estate cases (i.e., those valued at more than $64,000)
- 11 small estate cases (i.e., those valued at $64,000 or less)

The purpose of our audit work was to determine whether the Judicial Branch and the courts collect and maintain the data needed to oversee the Public Administrator function and to assess Public Administrator performance. Statutes and best practice guidance provide the following expectations for collecting and using data to monitor appointees, including Public Administrators:

- According to statute, the District or Probate Court in each judicial district is authorized to appoint a Public Administrator and approve the appointment of Deputy Public Administrators [Section 15-12-619, C.R.S.]. As the courts are the appointing authority, the Judicial Branch has an obligation to act as the oversight body for the Public Administrator function. Statute also provides that such appointed individuals serve at the pleasure of the appointing court and may be discharged by the court. Therefore, the courts are responsible for determining if the individuals appointed to the Public Administrator function are performing effectively and should continue in this position or be discharged. To oversee this function and determine if it is operating as policymakers intended, the Judicial Branch must have data that it can analyze to determine how Public Administrators are fulfilling their duties. Such data would allow the courts to assess the Public Administrators' performance and determine if Deputy Public Administrators are needed.

- The *National Probate Court Standards* recommend that probate courts collect and review meaningful caseload statistics, use these data to assess court appointee job performance, and regularly monitor their management information system to assist the court in performing its work effectively, efficiently, and economically.

- The *Standards for Internal Control in the Federal Government* (also known as the Green Book) issued by the United States Government Accountability Office, provides the overall framework for establishing and maintaining an effective system of internal control. The State Controller has adopted the Green Book as the state standards on internal controls for executive agencies in Colorado. Although the Judicial Branch is not subject to the State Controller's authority, these standards serve as a best practice and recommend that management determine what information it should collect to achieve its objectives and minimize risks. Under the Green Book, management should then collect the data from reliable sources and analyze it for effective monitoring.

WHAT PROBLEMS DID THE AUDIT WORK IDENTIFY?

Overall, we found that the Judicial Branch and the courts do not collect and maintain the fundamental data needed to oversee the Public Administrator function in Colorado and to assess Public Administrator performance. Specifically, we found that neither the Judicial Branch nor the courts have comprehensive data on the cases administered by Public Administrators at both a statewide- and individual-level, such as the:

- Total caseload for Public Administrators, broken down by case type (i.e., decedents' estates or conservatorships), status (i.e., ongoing or terminated), and age.

- Total amount of assets overseen or administered by Public Administrators.

- Total amount of fees charged by Public Administrators.

- Total number of hours worked on Public Administrator cases.
- Length of time Public Administrator cases stay open.
- Total amount of funds transferred to the Department of the Treasury.

WHY DID THE PROBLEMS OCCUR?

THE PURPOSE OF AND INFORMATION REQUIRED IN PUBLIC ADMINISTRATOR ANNUAL REPORTS IS NOT CLEARLY DEFINED. The annual reports that Public Administrators are required to submit each year are the Judicial Branch's and the courts' primary mechanism for obtaining information on the Public Administrator function and Public Administrator performance. However, the only direction provided in statute as to the purpose of the annual reports and the information they should include is that the reports are "concerning the administration of public administrator cases during the previous calendar year as the appointing court shall direct" [Section 15-12-623(2), C.R.S.]. Prior to 1991, the Public Administrator statutes included specific requirements for what information annual reports should contain, such as:

- The number of estates in process or closed.
- The total value of the estates.
- The total fees paid to the Public Administrator for services rendered.

When the Public Administrator statutes were amended in 1991, these specific requirements were removed and the Judicial Branch has not provided any further guidance on the purpose of and what should be included in the annual reports. During interviews, only two Public Administrators and one judge indicated what they considered the purpose of the annual reports to be, which is to provide the courts with a picture of what the Public Administrators are doing since the court has an obligation to supervise them. Conversely, one other Public Administrator stated that they had no idea what the purpose of the annual report was for.

In addition, the appointing courts have not consistently provided direction to the Public Administrators on what information should be included in the annual reports. Of the 18 Public Administrators and Deputy Public Administrators we interviewed, 13 (72 percent) stated that they were never given any guidance by their appointing court on what to include in the annual report and, therefore, included information that the previous Public Administrator had included or what they felt should be included. As a result, some annual reports include extensive information such as the total value of assets overseen for each case and in total for all cases, a breakout of the total number of cases handled by type, and the amount of fees collected for each case. Other annual reports only include minimal information such as the county in which the case is handled, the type of case, and the decedent's or protected person's name. The remaining five Public Administrators reported that they met with the judges in their districts to discuss their activities, but it was unclear if the discussions concerned what the judges wanted included in the annual reports.

Our review of the 19 Public Administrator and Deputy Public Administrator annual reports that were submitted for Calendar Year 2016 found that useful information was lacking and there were wide variances in the information provided in the reports. For example:

- None provided the total number of hours or total hours for each case the Public Administrator/Deputy Public Administrator worked on Public Administrator cases during Calendar Year 2016. This information could be useful in measuring the caseload of Public Administrators.

- 18 (95 percent) did not provide the cumulative fees that the Public Administrator/Deputy Public Administrator received for each individual case during the entire administration of the case as of the end of Calendar Year 2016.

- 11 (58 percent) did not provide a tally of the total number of cases the Public Administrator/Deputy Public Administrator handled during Calendar Year 2016. Although the annual reports provided

lists of the cases that the Public Administrators/Deputies had handled, the court would have to count each individual case to determine a total, which in one district amounted to more than 400 cases.

- 10 (53 percent) did not provide the aggregate fees that the Public Administrator/Deputy Public Administrator received during Calendar Year 2016 from all Public Administrator cases, and six of these also did not include any information on the fees collected from the individual cases.

- 8 (42 percent) did not provide the value of the estate for each case the Public Administrator/Deputy Public Administrator handled during Calendar Year 2016.

Further, one Public Administrator did not submit an annual report because the appointing court did not require them to do so. This court's interpretation of statute is that it allows the court to decide whether the Public Administrator should file a report because of the provision "as the appointing court may direct." However, it is unclear if the statute intends that the courts may waive the reports altogether.

In November 2016, the Colorado State Bar Probate Subcommittee, consisting of a number of Public Administrators, Deputy Public Administrators, practitioners, professional fiduciaries, and Judicial Branch staff drafted guidelines intended to standardize many of the operations of Public Administrators and provide direction to the judicial districts. The draft guidelines recommend that all annual reports include standard information, such as:

- Case name and number
- Inventory value
- Amount of the Public Administrator's fees and costs collected during the reporting period
- Any additional information required by the appointing court

As of April 2017, these guidelines had been presented to the Chief Judges in each of the judicial districts, as well as to the Probate Advisory

Workgroup within the Colorado Supreme Court. The Workgroup was awaiting the recommendations of this audit before moving forward with any formal action.

THE JUDICIAL BRANCH LACKS POLICIES RELATED TO ENTERING PUBLIC ADMINISTRATOR DATA INTO THE CASE MANAGEMENT SYSTEM IN TWO KEY AREAS:

- **THERE IS NO REQUIREMENT THAT PUBLIC ADMINISTRATOR CASES BE SPECIFICALLY DESIGNATED AS SUCH IN THE SYSTEM.** For the period covered by our audit (Calendar Year 2016), the *Judicial Resource Manual* (Manual), which is the Judicial Branch's policies and procedures manual, did not require court staff to enter "Public Administrator" into the party type field in the case management system. We found that court staff entered the "Public Administrator" designation in only 12 of the 45 (27 percent) conservator and large estate cases in our samples. The Judicial Branch reported that it provided training on entering the "Public Administrator" designation into the party type field to court staff beginning in May 2016; it also updated the Manual in May 2017 to include instructions for completing the field for conservatorship cases. However, the Manual still does not require court staff to populate this field with the "Public Administrator" designation for estate cases, nor does the Judicial Branch have procedures for monitoring the case management system to ensure that staff are complying. Without complete information in this field, there is no way to identify Public Administrator cases without reviewing each individual case file in the system.

- **THERE IS NO REQUIREMENT THAT SMALL ESTATE CASES BE ENTERED SEPARATELY INTO THE SYSTEM.** Although the Manual instructs court staff to assign a case number and enter information into the case management system for each small estate reported by Public Administrators in the statement of account that is filed when an estate is closed, court staff do not always do so. We found court staff assigned case numbers and entered information into the case management system for seven of the 11 small estate cases in our

sample (64 percent). Most Public Administrators file an individual statement of account for each small estate, which triggers the case being assigned a number and entered in the case management system. However, there are at least two Public Administrators who file a bundle of statements of account (rather than individual statements) for all of the small estate cases they closed each year, along with their annual reports. The Judicial Branch has not required court staff to separate out small estate cases, assign each a case number, and enter them into the case management system when Public Administrators submit bundled information. As a result, court staff have not done so. These two Public Administrators reported in their 2016 annual reports that they had worked on a combined total of 109 small estate cases during the year. Because none of these cases had been assigned individual case numbers and entered into the case management system, there was no information in the system on the cases and the Judicial Branch had no electronic record that these cases existed.

The Judicial Branch does not electronically track key data. Although Public Administrators are required to submit key data to the courts related to the estates and conservatorships that they administer, the Judicial Branch does not electronically track this information. For example, Public Administrators must file inventories in estate cases with the courts, as well as financial plans and annual reports as conservators, which provide the courts with the value of the assets they are overseeing, the fees they have charged to those estates, and any funds remaining after an estate has been settled that have been transferred to the Department of the Treasury. The case management system does have a field for court staff to enter the value of the assets that are being overseen for conservatorship cases. Although court staff could use this same field to enter the value of estates, the Judicial Branch has not directed them to do so. In addition, there is no place in the case management system to enter details on fees charged for either estate or conservatorship cases. As a result, there is currently no efficient means of collecting information such as the total amount of assets a Public Administrator is responsible for administering or the total amount of funds they have transferred to Treasury electronically. Calculating

totals for this information would require examining each of the separate filings and reports for each case and summing the totals.

WHY DO THESE PROBLEMS MATTER?

When the Judicial Branch and the courts do not collect and maintain the fundamental data needed to oversee the Public Administrator function in Colorado and to assess Public Administrator performance, there is no way for policymakers and the public to know if the function is operating as intended and achieving its purpose. The purpose of the Public Administrator function is to serve as a fiduciary of last resort and to administer decedents' estates and conservatorships when there is no one else to take care of them or when friends and family members decline to do so. The Public Administrator is given authority to make critical financial decisions for an individual or an estate, with little oversight from the court or other interested parties. In some Public Administrator cases, especially for small estates, there are no family members or other interested parties involved in the case to help monitor the Public Administrator's performance. In other types of probate cases, the courts rely on these interested parties to help monitor fiduciaries' actions. Therefore, it is important that the Judicial Branch and the courts have sufficient data to gauge Public Administrators' overall effectiveness in performing their duties. For example, without data on the total number and type of cases handled by each Public Administrator, the courts are not able to determine if the Public Administrator has a reasonable caseload that can be effectively managed or whether there is a need to appoint a Deputy Public Administrator to help administer the cases.

In addition, without data on the overall fees charged by Public Administrators, the courts cannot conduct high-level analyses such as calculating the ratios of the total fees charged to the total cases handled or total assets managed. This information could be used to assess the reasonableness of Public Administrator fees at a global level. For example, the courts could calculate the percentage of fees in relationship to estate size for all cases handled by a Public Administrator, and evaluate the level of fees for estate cases versus conservator cases to

determine if there are imbalances or discrepancies. The courts could use this information to determine if more analysis should be done on the fees charged by the Public Administrators.

We had a similar finding in our 2011 *Judicial Branch Oversight of Guardianships and Conservatorships Performance Audit*, where we found that the judicial districts did not have processes in place to review the work of Public Administrators and other professional guardians and conservators routinely appointed in their districts. The audit recommended that the Judicial Branch ensure that each judicial district has a process for evaluating the overall performance of professional guardians and conservators, including Public Administrators, and that the State Court Administrator's Office provide guidance on the standards to be applied when evaluating their performance. Although the Judicial Branch agreed with this recommendation, it initially planned to implement the recommendation through reviews conducted by protective proceedings monitors and Judicial Branch auditors. These reviews would examine individual report filings by fiduciaries, including Public Administrators, by looking for errors or discrepancies. However, since that time, the Judicial Branch has discovered that these reviews have not provided sufficient information for evaluating the overall performance of professionals. According to the Judicial Branch, a new system of automated reporting for professional conservators should be in place in October 2017 and it will capture important information such as estate value and fees. This automated reporting will not be available for decedent estate cases.

RECOMMENDATION 2

The Judicial Branch should ensure that it collects and maintains the fundamental data needed to oversee the Public Administrator function in Colorado and to assess Public Administrator performance by:

A Standardizing the format and content of Public Administrator annual reports and ensuring that they include the key elements needed to assess the performance of Public Administrators (e.g., total number of hours worked as a Public Administrator and total hours worked per case, tally of total caseload, cumulative fees for a given year and for each case, value of the estates, etc.). The Judicial Branch should then provide guidance to Public Administrators on the information required in the annual reports.

B Revising the *Judicial Resource Manual* to specify that court staff must enter the code designating when a Public Administrator is appointed to an estate case, and assign a case number and record details on each small estate reported by Public Administrators, including those reported in a bundle.

C Implementing mechanisms to collect and track key information related to Public Administrator performance.

D Using the information obtained in PARTS A, B, and C to assess the performance of Public Administrators and Deputy Public Administrators in the judicial districts to determine if the function is achieving its purpose.

RESPONSE

JUDICIAL BRANCH

A AGREE. IMPLEMENTATION DATE: SEPTEMBER 2018.

The Judicial Branch agrees with the recommendation and will utilize the group identified in Recommendation No. 1 to address this issue. Specifically, the group will be charged with standardizing the format and content of Public Administrator annual reports by determining the most relevant data to be used in the assessment of the performance of Public Administrators. As part of this process, the Branch will develop and provide guidance to Public Administrators on the information required in the annual reports.

B AGREE. IMPLEMENTATION DATE: SEPTEMBER 2018.

The Judicial Branch agrees with the recommendation and will update the Judicial Resource Manual (JRM) requiring that court staff enter the code designating when a Public Administrator is involved in a case and specifying that court staff must assign a case number for each Public Administrator's statement filed, including those reported in a bundle. In addition, we will require court staff to enter the code indicating the value of the estate in estate cases.

C AGREE. IMPLEMENTATION DATE: SEPTEMBER 2018.

The Judicial Branch agrees with the recommendation and will utilize the group identified in Recommendation No. 1 to address this issue. Specifically, the group will determine the most efficient method and system to collect and track key information related to Public Administrators.

D AGREE. IMPLEMENTATION DATE: SEPTEMBER 2018.

The Judicial Branch agrees with the recommendation to use information obtained in parts A, B, and C to assess the performance of Public Administrators and Deputy Public Administrators.

BONDS

The court can require fiduciary, or probate, bonds any time a person is appointed to act in a fiduciary role. These bonds serve as insurance against the fiduciary acting contrary to the best interests of the decedent or protected person and allow for the recovery of some assets if the fiduciary fails to act honestly or competently. Much like insurance, bonds require the holder to pay a periodic premium in order for the bond to remain active. If a fiduciary is found to be in breach of regulations and their responsibilities, the injured party can file a claim against the bond and receive material compensation up to the bond's amount. Even though the fiduciary pays a premium for the bond, the surety company from which the fiduciary purchased the bond may request that the court order the fiduciary to compensate the surety company for any claims paid out against the bond. Generally, fiduciary bonds are case-specific; that is, the fiduciary purchases the bond for a specific case and it expires once the case is closed.

Public Administrators and Deputy Public Administrators act in a number of fiduciary capacities in probate cases, including as personal representatives and conservators. Statute permits courts to require a bond and set the amount of the bond for conservators and personal representatives in individual cases in order to protect the assets of those specific cases [Sections 15-12-603(2) and 15-14-415, C.R.S.]. However, statute requires Public Administrators to obtain a general fiduciary bond that covers all of the cases that they handle as the Public Administrator, not on a case-by-case basis [Section 15-12-619(4), C.R.S.].

WHAT AUDIT WORK WAS PERFORMED, WHAT WAS THE PURPOSE, AND HOW WERE THE RESULTS MEASURED?

We reviewed the Public Administrator and Deputy Public Administrator bonds on file with the Secretary of State's Office, as of April 1, 2017. In addition, we requested proof of active bonds from the judicial districts and the Public Administrators and their Deputy Public Administrators (i.e., bonds that had not expired and for which all premiums were up to date) for the 13 Public Administrators and 18 Deputy Public Administrators in office as of April 1, 2017. Finally, for the 56 large estates, conservatorships, and small estates in our samples, we compared the value of the estates and protected persons' accounts to the value of the bonds obtained by Public Administrators.

The purpose of our audit work was to determine if Public Administrators and Deputy Public Administrators obtained and maintained active bonds and filed a record of the bonds with the Secretary of State, as required by statute, and whether the amount of the bonds was sufficient to adequately protect estates and conservatorships.

Statute requires that, "Every public administrator shall procure and maintain a general bond in the sum of twenty-five thousand dollars covering the public administrator's performance and the performance of the public administrator's employees to the state of Colorado. Such bond shall be conditioned on the faithful discharge of the duties of the office of the public administrator and shall be filed in the office of the secretary of state," [Section 15-12-619(4), C.R.S.]. This requirement is specific to Public Administrators and the bond could be applied to any cases that the Public Administrator handles when functioning in this role.

Requiring bonds for fiduciaries is consistent with the *National Probate Court Standards*, which suggest that Probate Courts should require a surety bond or other asset protection arrangement of a fiduciary under

certain circumstances as a means of protecting the estate. The Standards also suggest that the bond should be for an amount reasonably related to the value of the assets and annual income of the estate.

WHAT PROBLEMS DID THE AUDIT WORK IDENTIFY?

Overall, we identified gaps in the bonding process, as described below.

SOME PUBLIC ADMINISTRATORS AND DEPUTY PUBLIC ADMINISTRATORS DO NOT MAINTAIN OR FILE BONDS WITH THE SECRETARY OF STATE'S OFFICE, AS REQUIRED BY STATUTE. EXHIBIT 2.2 shows the number of Public Administrators and Deputy Public Administrators who did not provide evidence of active bonds and the number for whom the Secretary of State's Office had no record of a bond filed, as of April 1, 2017.

EXHIBIT 2.2.
PUBLIC ADMINISTRATORS AND
DEPUTY PUBLIC ADMINISTRATORS
EVIDENCE OF ACTIVE BOND AS OF APRIL 1, 2017

	PUBLIC ADMINISTRATORS	DEPUTY PUBLIC ADMINISTRATORS	TOTAL
Total in Colorado	13	18	31
Did not provide evidence of active bond	1[1]	4[2]	5
No record of active bond with Secretary of State's Office[3]	10	13	23

SOURCE: Office of the State Auditor compiled from document requests of district courts, Public Administrators, and the Secretary of State's Office.
[1] This Public Administrator provided proof of an active bond that was acquired after we requested proof of bond.
[2] One Deputy Public Administrator provided proof of a $10,000 bond, which did not meet the $25,000 statutory requirement.
[3] Of the Public Administrators and Deputy Public Administrators that did not have an active bond filed with the Secretary of State's Office, there was a record that an older bond had been filed for four Public Administrators and one Deputy Public Administrator at some time in the past.

THE $25,000 BOND REQUIREMENT MAY NOT ADEQUATELY PROTECT DECEDENTS' ESTATES AND CONSERVATORSHIPS. The overall average value of the large and small estates and conservatorships in our samples for which the initial or annual report included an estate value was nearly $207,300, with the highest value being about $1.7 million. Thus, both the maximum and average values of the estates and accounts in our samples were significantly higher than the $25,000 bond currently required for Public Administrators. As such, the required bonds may not be adequate to provide the intended protection if a Public Administrator fails to act honestly or competently in carrying out their fiduciary duties. EXHIBIT 2.3 shows the average value of cases within each sample, as well as the range of values.

EXHIBIT 2.3.
VALUE OF LARGE ESTATE, CONSERVATORSHIP, AND SMALL ESTATE SAMPLE CASES

CASE TYPE	AVERAGE VALUE OF CASE	RANGE OF CASE VALUES
Large Estates	$368,500	$67,700 - $1,728,300
Conservatorships	$194,200	$1,300 - $1,182,700
Small Estates	$9,000	$0 - $56,300
Overall	$207,300	$0 - $1,728,300

SOURCE: Office of the State Auditor analysis of non-statistical random samples of 25 large estate cases, 20 conservatorship cases, and 11 small estate cases.

WHY DID THE PROBLEMS OCCUR?

First, it is not clear if the statutory bond requirement applies to Deputy Public Administrators. The Judicial Branch has not provided clarification on the bond requirement, either through policies and procedures or through training. According to one of the Public Administrators whose Deputy Public Administrator did not have evidence of an active bond, the Deputy had not procured a bond because the Public Administrator did not think the statutory requirement applied to them. The statutory provision requiring a bond states only that "Every *public administrator* [emphasis added] shall procure and maintain a general bond…" [Section 15-12-619(4), C.R.S.]; it does not specifically say that Deputy Public Administrators must also maintain a bond. However, the statute specifically states that Deputy Public Administrators appointed prior to July 1, 1991, are

exempt from the bond requirement [Section 15-12-619(7), C.R.S.]. Given the specific exemption, it would be reasonable to infer that those Deputy Public Administrators appointed after July 1, 1991, would be subject to the bond requirement. In addition, Deputy Public Administrators serve as fiduciaries and perform the same duties as the Public Administrators; therefore, it is reasonable that Deputy Public Administrators should also be required to obtain a bond to protect interested parties if they fail to act honestly or competently.

Second, it is not clear how often Public Administrators should update the Secretary of State's Office on the status of their bonds. Statute states that bonds, "shall be filed in the office of the secretary of state" [Section 15-12-619(4), C.R.S.]. However, there is no requirement that the Secretary of State's Office receive documentation that a bond is currently in force. For four Public Administrators and one Deputy Public Administrator for whom the Secretary of State's Office did not have documentation of an active bond, there was a record of an older bond that had been archived.

Third, there is no requirement that Public Administrators provide proof of bonds to the judicial district. Of the 25 Public Administrators and Deputy Public Administrators that had evidence of an active bond, only 9 had provided these bonds to the judicial district that appointed them. Neither statute, the Judicial Branch, nor the individual judicial districts require Public Administrators and Deputy Public Administrators to provide proof of their bonds to the district. Requiring Public Administrators and Deputy Public Administrators to routinely update their appointing courts about their bonded status could serve as a reminder for them to keep their bonds current and help the judicial districts and courts assess compliance with statute.

Fourth, the statutory requirement for bonding is not based on the value of cases. The Judicial Branch has not assessed whether the $25,000 Public Administrator bond is sufficient and has not provided any guidance to the judicial districts and courts on bonds for Public Administrators. In addition, we found no evidence that the courts require Public Administrators to obtain additional bonds when they are

assigned high value cases for which the $25,000 Public Administrator bond may provide insufficient protection. In fact, the courts routinely exempt Public Administrators from having to comply with additional bond requirements that generally apply to fiduciaries. For example, statute requires that conservators obtain a bond in an amount determined by the courts, although the judge can waive this bond [Section 15-14-415, C.R.S.]. For 16 of the 20 conservatorship cases in our sample (80 percent), the courts explicitly exempted the Public Administrators from having to provide an additional bond. The total value of these 16 cases was about $3 million. Nine of these 16 conservatorships (56 percent) had assets valued at over $25,000 each, ranging from about $42,100 to nearly $1.3 million. Similarly, courts may require personal representatives for decedents' estates to obtain an additional bond if the judge determines that one is needed or if the will requires one. However, for 21 of the 25 estates in our sample (84 percent), the courts explicitly exempted the Public Administrators from having to provide an additional bond. The total value of these estates was about $6.3 million. Further, statute exempts Public Administrators and Deputy Public Administrators who were appointed prior to July 1, 1991, from having to comply with the $25,000 bond requirement at all [Section 15-12-619(7), C.R.S.]. Although the three current Public Administrators who were appointed prior to July 1991 have obtained a bond regardless of the exemption, they are not required to do so and could choose not to maintain their bonds.

WHY DO THESE PROBLEMS MATTER?

When Public Administrators do not maintain bonds of adequate value, there is a risk that there are not sufficient funds available to compensate parties involved in the cases if the Public Administrators act improperly. When this occurs, the Attorney General can sue against the bond to compensate any party harmed by the neglect or wrongful action of the Public Administrator. Some current Public Administrators and Deputy Public Administrators have recognized that a $25,000 bond does not adequately protect the estates and conservatorships. Of their own volition, eight of the 31 Public Administrators and Deputy Public

Administrators (26 percent) have obtained bonds valued between $50,000 and $100,000.

The legislative intent behind requiring that Public Administrators maintain a bond is to protect the rightful heirs and protected persons in probate cases. Without a record of the bond, the judicial districts cannot monitor compliance and ensure that the Public Administrators and Deputy Public Administrators maintain an active bond. Since Deputy Public Administrators perform the same functions as Public Administrators, the same risk is also present for any cases they administer. One Deputy Public Administrator who did not provide proof of bond was responsible for 10 cases in Calendar Year 2016, totaling $6.5 million. For three of the other four Public Administrators and Deputy Public Administrators who did not have proof of an active bond, we could not determine the value of the Public Administrator cases they handled because they did not report this information in their annual reports. The remaining one Deputy Public Administrator reported that she was not assigned any Public Administrator cases during Calendar Year 2016.

RECOMMENDATION 3

The Judicial Branch should ensure that Public Administrators maintain bonds of sufficient value to adequately protect the estates and conservatorships they oversee by:

A Implementing written policies and procedures to clarify that anyone appointed to act in the capacity of Public Administrator, including Deputy Public Administrators, must comply with the statutory bond requirements and that judicial districts should obtain proof from Public Administrators and Deputy Public Administrators that a bond has been procured, appropriately filed with the Secretary of State's Office, and updated as needed.

B Assessing the level of bond that would sufficiently cover the activities of Public Administrators, pursuing any necessary changes to the statutory bond amount based on this assessment, and providing guidance to the judicial districts and courts on bond amounts for Public Administrators.

RESPONSE

JUDICIAL BRANCH

A AGREE. IMPLEMENTATION DATE: SEPTEMBER 2018.

The Judicial Branch agrees with the recommendation and will utilize the group identified in Recommendation No. 1 to address this issue. Specifically, the group will develop policies and procedures clarifying that Public Administrators and Deputy Public Administrators must comply with the statutory requirements for bonds, including providing proof that the bond was filed and updated appropriately with the Secretary of State.

B AGREE. IMPLEMENTATION DATE: SEPTEMBER 2018.

The Judicial Branch agrees with the recommendation and will utilize the group identified in Recommendation No. 1 to address this issue. Specifically, the group will review the appropriate statutory level of bond amount that would sufficiently cover Public Administrator activities.

UNDISTRIBUTED ESTATE FUNDS TO TREASURY

When funds remain in a decedent's estate after everything else has been paid and there are no known heirs, or they cannot be located, the Public Administrator is responsible for transferring the remaining funds to the Treasury to be included on its "Estates of Deceased Owners List." These funds are available if any heirs come forward within 21 years of the transfer. At the beginning of Fiscal Year 2017, there was about $4.5 million on the "Estates of Deceased Owners List." Should an heir become aware of these funds, they may make a claim against the funds by petitioning the court where the estate was handled. The Public Administrator is also responsible for notifying the Attorney General's Office (Attorney General) when funds have been sent to the Treasurer.

Under statute, funds deposited with the Treasurer from decedents' estates are treated differently from funds maintained by the Treasurer in its Unclaimed Property Trust Fund in accordance with the Unclaimed Property Act (Act). The Act concerns property that "has remained unclaimed by the owner for more than five years after it became payable or distributable" and requires that such funds be held by the Treasurer in perpetuity for potential payment to the rightful owners. Funds deposited in the Unclaimed Property Trust Fund, along with any interest earned thereon, are prohibited from reverting to the State's General Fund or any other state fund [Section 38-13-116.5, C.R.S.].

WHAT AUDIT WORK WAS PERFORMED, WHAT WAS THE PURPOSE, AND HOW WERE THE RESULTS MEASURED?

We reviewed the 71 Public Administrator annual reports submitted for Calendar Years 2012 through 2015 and identified 24 cases for which Public Administrators reported sending undistributed funds from decedents' estates to the Treasury. We compared these 24 cases to the

"Estates of Deceased Owners List" maintained by the Treasurer and the list of probate cases maintained by the Attorney General to determine if the funds reported for the 24 cases were included on the lists.

The purpose of our audit work was to determine if undistributed funds from decedents' estates managed by Public Administrators have been properly handled according to the following statutory requirements:

- If there are no heirs, devisees, or beneficiaries to receive an estate's assets, or there are but they cannot be located or refuse to accept their distribution of the estate, the Public Administrator is required to reduce the estate's assets to cash and distribute the funds to the Treasurer. The Treasurer is required to maintain such funds until claimed by an heir, up to 21 years. The Treasurer identifies funds from decedent estates on its "Estates of Deceased Owners List." After 21 years, any money recorded on the list that has not been claimed by an heir shall be paid into the Public School Fund [Section 15-12-914(3), C.R.S.].

- The Public Administrator must report to the Attorney General any transfer of funds to the Treasurer, as well as the identity of the deceased and anyone who might be entitled to the funds. This information can then be used by the Attorney General to help identify any false claims made on the funds [Section 15-12-914(4), C.R.S.].

WHAT PROBLEM DID THE AUDIT WORK IDENTIFY AND WHY DID IT OCCUR?

Based on our review of the 24 cases where Public Administrators reported sending funds to the Treasury, we found that some of the undistributed funds from decedents' estates were not handled according to statute, as described below.

THE TREASURY DID NOT RECORD MOST OF THE FUNDS FROM THE CASES WE REVIEWED ON ITS "ESTATES OF DECEASED OWNERS LIST." Specifically, the Treasury had not recorded about $87,000 from 20 of

the cases we reviewed (83 percent) on this list, but instead had deposited the funds in the Unclaimed Property Fund. This problem occurred due to a lack of clear guidance on how funds from decedents' estates should be identified when being transferred to Treasury. First, while Treasury has a short description of the "Estates of Deceased Owners List" on its website, it does not provide any direction on what information should be included with the transfer of these funds to make it clear they are decedent's funds. In contrast, Treasury's website includes numerous instructions for sending money to the Treasurer under the Unclaimed Property Act [Section 38-13-101, et. seq., C.R.S.] and a form that can be submitted with Unclaimed Property funds. In the absence of specific guidance for decedents' estates, Public Administrators and other personal representatives may incorrectly use the unclaimed property form when sending monies from decedents' estates. In fact, the Public Administrator for the 20 cases we identified that had been incorrectly transferred to the Unclaimed Property Fund submitted the Unclaimed Property form with their transfers. During the course of the audit, Treasury staff identified an additional 11 decedent estate cases valued at $24,000 that were submitted by Public Administrators outside of the report period we examined and were incorrectly deposited into the Unclaimed Property Fund.

Second, the Judicial Branch has not provided guidance to Public Administrators on these transfers. Specifically, the Judicial Branch has not developed any policies or procedures directing Public Administrators to inform the Treasurer that transferred funds are from decedents' estates. From interviews we conducted with Public Administrators, it is clear that there is confusion regarding the difference between money from decedents' estates and money that has been abandoned. Some Public Administrators stated that the two types of funds are the same and are all considered "unclaimed property." In addition, one Public Administrator stated that the "Estates of Deceased Owners List" maintained by the Treasurer is only for formally probated estate cases, which would often exclude small estates valued at $64,000 or less. According to statute, funds from small estates should go to the "Estates of Deceased Owners List" regardless of whether the estate went through probate.

PUBLIC ADMINISTRATORS REPORTED ONLY ONE OF THE 24 CASES TO THE ATTORNEY GENERAL. The 23 cases not reported totaled about $97,100. The Judicial Branch has not provided any guidance to Public Administrators or other personal representatives about notifying the Attorney General when decedents' funds are sent to the Treasury. In addition, the Judicial Branch has not provided any training to Public Administrators on handling undistributed funds from decedents' estates. Such training could address the distinctions between decedents' funds and other types of unclaimed property, as well as the transfer and notification processes required.

WHY DOES THIS PROBLEM MATTER?

When undistributed funds from decedents' estates are not properly recorded by the Treasurer on the "Estates of Deceased Owners List," that money will not be available to the State if unclaimed, as intended by statute. Money that is not distributed from decedents' estates because there are no willing or available heirs to claim it is a source of revenue for both the State's General Fund and the Public School Fund. Any interest earned on these funds during the 21-year period prior to the funds reverting to the State is transferred to the State's General Fund. Between Fiscal Years 2013 through 2016, the "Estates of Deceased Owners List" had an average of $4.7 million worth of undistributed assets on it; however, Treasury does not separately track the amount of interest earned from those specific funds. In addition, from Fiscal Years 2013 through 2016, about $313,000 was transferred to the Public School Fund because the 21-year maturation period had expired.

Because monies deposited into the Unclaimed Property Fund never revert to the State, any funds mistakenly treated as unclaimed property rather than decedents' funds may never be available to the State. According to the Treasury, it will move the roughly $110,000 from decedents' estates that had been incorrectly deposited into the Unclaimed Property Fund ($87,000 we found and another $24,000 Treasury subsequently identified) onto the "Estates of Deceased Owners List" for the remainder of the 21-year period. If the errors had not been identified, these funds would have stayed in the Unclaimed

Property Fund in perpetuity, if not claimed by an heir. We were not able to determine the full scope of this problem because there is a possibility that there were other Public Administrator cases during the period reviewed where funds were transferred to Treasury and incorrectly recorded as unclaimed property. However, if the Public Administrators did not report these transfers to the courts, we would have no way to identify them. Given the number of cases that Public Administrators handle where there are no heirs and without clarification on where these funds should go, this problem is likely to continue in the future. Additionally, we did not audit other types of personal representatives (i.e., other than the Public Administrators) who also transfer funds to the Treasurer when no heir can be identified or located. As a result, we were not able to determine if similar problems exist for these individuals.

According to staff at the Attorney General's Office, potential heirs often request the list of probate cases on file with them, including those submitted by Public Administrators, to identify money to which the potential heirs may be entitled. If the case information has not been filed with the Attorney General, then those heirs would not be aware of the existence of funds to which they have a valid claim. Statute also states that the purpose for filing information on estates of deceased individuals with the Attorney General is to help identify any false claims made on the funds. If the information is not filed with the Attorney General, it cannot fulfill that purpose.

RECOMMENDATION 4

The Department of the Treasury should provide guidance on its website for personal representatives, including Public Administrators, on the information they should provide when transferring funds from decedents' estates and develop standardized documentation requirements for these transfers that clearly indicate that the transferred funds are intended for inclusion on the "Estates of Deceased Owners List."

RESPONSE

DEPARTMENT OF THE TREASURY

AGREE. IMPLEMENTATION DATE: NOVEMBER 2017.

The Unclaimed Property Division ("the Division") will follow the Auditor's recommendation to add language to the Division's website related to transferring undistributed funds from decedent estates. The Division will also explore the best way to incorporate improved documentation practices that clearly indicate the fund's intended destination, and include instructions regarding the improved documentation on the website.

RECOMMENDATION 5

The Judicial Branch should ensure that undistributed funds from decedents' estates are handled in accordance with statute by:

A Working with the Department of the Treasury to provide guidance and training to Public Administrators on the distinction between decedents' funds and other unclaimed property, and the methods for transferring undistributed funds from decedents' estates to the Department of the Treasury and reporting these transfers to the Attorney General's Office.

B Working with Public Administrators and the Department of the Treasury to determine if there are additional decedents' funds that have been improperly deposited into the Unclaimed Property Fund and correcting any errors identified.

RESPONSE

JUDICIAL BRANCH

A AGREE. IMPLEMENTATION DATE: MARCH 2018.

The Judicial Branch agrees with the recommendation and will coordinate with the Department of the Treasury to provide guidance and training on the information fiduciaries should provide when transferring funds from decedents' estates.

B AGREE. IMPLEMENTATION DATE: MARCH 2018.

The Judicial Branch agrees with the recommendation and will work with the Department of the Treasury and Public Administrators to determine if there are additional decedents' funds that have been improperly deposited into the Unclaimed Property Fund, and will work with the Department of the Treasury to correct such errors.

PUBLIC ADMINISTRATOR APPOINTMENTS

Under current statute [Section 15-12-619, C.R.S.], the only requirement for someone to be appointed a Public Administrator is that they be at least 21 years of age and a resident of, or have a business in, the judicial district in which they are appointed. Thus, the determination of who may be suitable to be appointed a Public Administrator is left solely to the courts. We received information from the courts and found that there is wide variation in the processes they used to make Public Administrator appointments. For example, of the 13 judicial districts that have appointed a Public Administrator:

- Two interviewed applicants prior to appointing someone to the position. Eight judicial districts did not conduct interviews prior to making the appointments, and the remaining three districts did not respond to our question.

- Six obtained resumes from the persons appointed as Public Administrators. The other seven judicial districts did not obtain resumes and thus, did not have documented information about the training, education, experience, or prior service as a fiduciary for the individuals appointed.

- Five publicly advertised the position and accepted applications from any interested individuals. Four judicial districts did not advertise the positions, and the remaining four districts did not respond to our question.

- One conducted a criminal background check on the individual prior to appointment. The other 12 judicial districts did not conduct background checks.

We also found that the courts have not defined the qualifications they require of an individual to be appointed a Public Administrator. Over

the time period we audited, 28 of the 29 Public Administrators and Deputy Public Administrators were attorneys, meaning they are educated and required to adhere to ethical standards established by the Colorado Bar Association. However, there is no requirement that they be attorneys. In addition, court staff reported that having a background in probate is a key qualification for the position; however, a probate background and related years of experience are not requirements. Further, there are no requirements that Public Administrators and Deputy Public Administrators have accounting or financial management skills even though a large part of the position involves managing the finances of a protected person or decedent's estate. According to a number of the Public Administrators we interviewed, the cases they handle require much more accounting, researching, and financial management work than work that requires a licensed attorney. In fact, one Public Administrator questioned the need for Public Administrators to be attorneys. With limited qualifications for Public Administrators and Deputy Public Administrators established in statute and no qualifications established by the courts or the Judicial Branch, the public is not assured that only qualified individuals who must adhere to ethical standards will be appointed to these positions of trust.

According to the judicial districts, they have not developed policies and procedures around the appointment process for three primary reasons: (1) the current Public Administrator has served well in the position for a considerable length of time and they have not felt compelled to develop procedures for appointing a new Public Administrator; (2) the courts have worked with the individual appointed as Public Administrator on cases as a private attorney and, therefore, have a familiarity with the quality of work from that attorney; or (3) there are few people in the community who have shown interest in the position, even when the position was posted in some public forum, so an appointment process has been unnecessary.

In the course of our audit work, we did not find any evidence of Public Administrators misusing their positions or being unqualified to fulfill their duties, which may indicate that the existing appointment processes

are adequate. However, there are reasons to consider establishing robust, uniform requirements for Public Administrators, such as:

- Public Administrators are placed in a position of trust due to their authority to make critical financial decisions for protected persons or decedents' estates.

- In some of the cases administered by Public Administrators, there is no one else (e.g., family member or beneficiary) with an interest in making sure that the Public Administrator meets their fiduciary duty and acts in the best interest of the protected person or the decedent's estate.

- There is a lack of rigorous monitoring of Public Administrators, as discussed in the Data, Fees and Costs, and Bonds findings.

These factors, particularly in combination, create a risk that an unethical or unqualified individual could be appointed and mismanage an estate or a protected person's finances. Therefore, the General Assembly may wish to consider establishing additional minimum qualifications for Public Administrators. In doing so, the General Assembly would need to balance the intent of the Colorado Probate Code which is to simplify probate law and promote an efficient system for settling estates and managing conservatorships with the need to ensure that the courts appoint Public Administrators who have both the skills to competently fulfill their duties and the integrity to operate in the best interests of the protected person or estate.

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